

**CITY OF HORSESHOE BAY**

**ORDINANCE NO. ORD 2019-09**

**TREE TRIMMING PROTECTION ORDINANCE**

**AN ORDINANCE OF THE CITY OF HORSESHOE BAY ADDING ARTICLE 8.09 TREE TRIMMING PROTECTION TO CHAPTER 8 OFFENSES AND NUISANCES; PROVIDING FOR TITLE, PURPOSE, DEFINITIONS, PENALTY AND ENFORCEMENT, AND ABATEMENT AND PREVENTIVE MEASURES; AND PROVIDING FOR FINDINGS OF FACT; SEVERABILITY; REPEALER; EFFECTIVE DATE; AND PROPER NOTICE AND MEETING**

**WHEREAS**, The Mayor and City Council of the City of Horseshoe Bay, Texas recognize the importance and necessity of protecting live oak trees in the City from the oak wilt disease; and

**WHEREAS**, certain regulations are required to be established in order to restrict the cutting of oak trees during certain months of the year, allowing cutting during those months with specific requirements, and requiring specific requirements when cutting occurs during months when it is not allowed; and

**WHEREAS**, the City Council of Horseshoe Bay finds that amending Chapter 8 Offenses and Nuisances, by adding Article 8.09 Tree Trimming Protection is in the best interests of the City and is necessary and proper for good government.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HORSESHOE BAY, TEXAS:**

**1. FINDINGS OF FACT**

All of the above premises are hereby found to be true and correct legislative and factual findings of the City Council, and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

**2. ARTICLE 8.08 TREE TRIMMING PROTECTION**

New Article 8.09 Tree Trimming Protection is hereby added to Chapter 8 Offenses and Nuisances to read as follows:

**ARTICLE 8.08 TREE TRIMMING PROTECTION**

**Sec. 8.09.001 Title**

This article shall be known and may be cited as the tree trimming protection ordinance.

**Sec. 8.09.002 Purpose**

The purpose of this Article is to regulate tree trimming activities for oak trees in the city in order to help protect the trees from oak wilt disease.

### **Sec. 8.09.003 Definitions**

For the purposes of this article, the following words and phrases shall have the meaning respectively ascribed to them by this section. Words used in this article and not defined in this article shall have their ordinarily accepted meaning:

Firewood. Wood larger than two inches in diameter cut from diseased oaks and wood from an unknown source that may potentially harbor the oak wilt fungus.

Fungicide. A chemical treatment used on non-symptomatic or slightly symptomatic trees within the trench line that could be vulnerable to infection.

Live oaks. Live Oaks are Texas live oak/*Quercus fusiformis* and live oak/*Quercus virginiana* not plateau and coastal. Oak wilt is *Bretziella fagacearum*.

Nuisance. Any tree infected by oak wilt or any firewood and woody debris from a tree suspected to have died from oak wilt, as determined by an approved laboratory analysis or from field diagnosis as performed by the city forester or state forest service staff forester, are hereby declared to be a public nuisance.

Oak wilt. A vascular wilt disease of oaks. The fungus responsible, *Ceratocystis fagacearum*, invades the water-conducting tissues of oak roots, trunks, and limbs. *Ceratocystis fagacearum* does not actively grow anywhere in nature except in oak trees. Spores of this fungus can be moved around by certain insects and by humans.

Preventive measures. Actions that prevent the spread of oak wilt from diseased to healthy oaks, including but not limited to, grey spray paint as long as it is applied immediately when wounds occur, oak wilt suppression trench installation and the removal and destruction of diseased oaks and firewood.

Red oaks. Red oaks are Texas red oak/*Quercus buckleyi*.

Susceptible species. All varieties of oaks (red, live and white) can get oak wilt.

Trenching. Short for "oak wilt suppression trench installation," a method used to isolate the infected area between healthy and diseased trees. Trenching equipment is used to cut connecting roots so that the fungus cannot spread between trees.

Woody debris. Branches and limbs smaller than 2 inches in diameter cut from diseased trees.

### **Sec. 8.09.004 Violations, Penalty and Enforcement**

- a) All species and varieties of diseased oak trees that are dead or substantially dead, and all dead diseased oak wood to which the bark is still attached, which, because of their condition, may serve as a breeding place for any carrier of said disease, are hereby declared to be public nuisances.
- b) Pruning or cutting of oak trees shall be prohibited in the spring months of February through June when fungal spore formation and beetle activity are highest unless such activities are completely unavoidable in order to protect the safety of people and property or the health of the tree. Pruning or cutting of oaks is permitted from July through January.

- c) It shall be unlawful to stack firewood taken from live oaks known to be infected or suspected of being infected by the oak wilt fungus around or near healthy oaks unless the entire stack is completely wrapped in clear plastic with the ends buried, tucked under, or completely secured with weights.
- d) It shall be unlawful for any person to transport or sell firewood within the city that was taken from trees known or suspected to be infected by the oak wilt fungus.
- e) Red oaks known or suspected to have died of oak wilt may not be retained for firewood under any circumstances due to the high risk of fungal mat formation and insect transmission.
- f) Red oaks that are dead or dying of oak wilt as determined by the city staff or the state forest service shall be cut at ground level, with all firewood and woody debris covered and hauled away or disposed of by burying, burning or chipping within three working days.
- g) Regardless of the time of year that a tree is cut or otherwise damaged by natural disaster and a wound occurs, gray spray paint must be applied immediately to all wounds of any size on susceptible oaks, including the cut surface of healthy oak stumps, pruning cuts, construction damage, or any spot where the bark has been removed to expose the wood beneath, in order to discourage potential insect/disease contamination. Failure to seal any wound immediately after the wound is discovered or occurs is an unlawful violation of this article.
- h) It shall be unlawful for any person, firm or corporation to violate the provisions of this article. Any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor, and each and every day or portion thereof during which any violation of any provision of this article is committed, continued, or permitted, shall be considered a separate offense and upon the conviction of any such violation, such offense shall be punishable by a fine of not more than one thousand dollars (\$1,000.00) per day.
- i) The city's code officer is charged with the enforcement of the provisions of this article.

#### **Sec. 8.09.005    Inspections**

- a) The city and the state forest service and its agents are authorized and empowered to enter upon any lot or parcel of land in the city at any reasonable hour for the purpose of inspecting any oak tree(s) or dead oak wood situated thereon.
- b) If such premises are occupied, the above personnel shall first present credentials and request entry.
- c) If such premises are unoccupied, the city shall first make a reasonable effort to locate the owner or other persons who have charge or control of the premises and request cooperation for entry.

- d) Permission of the owner, occupant, or person in control of the premises is necessary for entry. If such entry is refused and the city has probable cause to believe that there exists on the premises a nuisance as defined herein, the city shall go before the municipal court judge and seek to obtain a search warrant. The purpose of the warrant is to determine the presence of a nuisance and to obtain such specimens of trees as are required for the purposes of analysis to determine whether the same are infected.

### **3. SEVERABILITY**

Should any part, sentence or phrase of this Ordinance be determined to be unlawful, void or unenforceable, the validity of the remaining portions of this Ordinance shall not be adversely affected. No portion of this Ordinance shall fail or become inoperative by reason of the invalidity of any other part. All provisions of this Ordinance are declared to be severable.

### **4. REPEALER**

All ordinances or parts of ordinances in force when the provisions of this Ordinance become effective which are inconsistent or in conflict with the terms and provisions contained in this Ordinance are hereby repealed only to the extent of such conflict.

### **5. EFFECTIVE DATE**

This Ordinance shall be and become effective from and after its date of passage and publication as may be required by governing law.

### **6. PROPER NOTICE AND MEETING**


It is hereby officially found and determined that the meeting at which this Ordinance was adopted was open to the public and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

**ADOPTED AND APPROVED** on this 15<sup>th</sup> day of January, 2019 by a vote of the City Council of the City of Horseshoe Bay, Texas.

**CITY OF HORSESHOE BAY**

  
Stephen T. Jordan, Mayor

**ATTEST:**

  
Kerri Craig, TRMC  
City Secretary